

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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JUN 21 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0090-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
LINDA GARCIA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20050092

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara La Wall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Robert J. Hirsh, Pima County Public Defender
By David J. Euchner

Tucson
Attorneys for Petitioner

K E L L Y, Judge.

¶1 Following a jury trial, Linda Garcia was convicted of first-degree murder, burglary, and theft of a means of transportation. The trial court sentenced her to life in

prison with the possibility of parole after twenty-five years for the murder and concurrent, presumptive terms of imprisonment for the burglary and theft. This court affirmed the convictions and sentences on appeal. *State v. Garcia*, No. 2 CA-CR 2006-0346 (memorandum decision filed Dec. 7, 2007). Garcia then filed a notice and petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., alleging ineffective assistance of counsel, and claiming her trial counsel had exerted “undue pressure on [her] to waive her right to testify in her own defense.” The trial court denied relief and dismissed the petition following an evidentiary hearing. We review the court’s ruling for an abuse of discretion. *See State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986). Finding none, we deny relief.

¶2 Garcia acknowledges in her petition for review that she and trial counsel gave differing accounts in their affidavits and in their testimony at the evidentiary hearing about her decision not to testify. The trial court found Garcia’s testimony “not credible” and implicitly credited trial counsel’s version of events. Although Garcia also acknowledges “[t]he trial court is entrusted with evaluating credibility of witnesses,” she contends the court “abused its discretion in its evaluation of the testimony,” arguing that trial counsel’s testimony was “obviously incredible” and that documentary evidence supported her contentions.

¶3 But the trial judge was ““in the best position to evaluate credibility and accuracy, as well as draw inferences, weigh, and balance”” evidence at an evidentiary hearing. *State v. Hoskins*, 199 Ariz. 127, ¶ 97, 14 P.3d 997, 1019 (2000), *quoting State v. Bible*, 175 Ariz. 549, 609, 858 P.2d 1152, 1212 (1993). Thus, the trial court, not this

court, determines the credibility of witnesses, *State v. Ossana*, 199 Ariz. 459, ¶ 7, 18 P.3d 1258, 1260 (App. 2001), and the weight of evidence presented, *State v. Rodriguez*, 205 Ariz. 392, ¶ 18, 71 P.3d 919, 924 (App. 2003). We defer to its determinations and find no abuse of discretion in the court’s conclusion that trial counsel had “not pressured [Garcia] into not testifying.”

¶4 Because Garcia did not sustain her burden of showing counsel had performed deficiently by pressuring her not to testify, *see Strickland v. Washington*, 466 U.S. 668, 687 (1984), we need not address Garcia’s contention that the trial court “used an erroneous standard for determining the second *Strickland* prong, whether [Garcia had been] prejudiced” by counsel’s allegedly deficient performance. “Failure to satisfy either prong of the *Strickland* test is fatal to an ineffective assistance of counsel claim.” *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006).

¶5 Although we grant Garcia’s petition for review, we deny relief.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge